

NC General Statutes: Chapter 87, Article 7
North Carolina Well Construction Act

§ 87-83. Short title.

This Article shall be known and may be cited as the North Carolina Well Construction Act. (1967, c. 1157, s. 1.)

§ 87-84. Findings and policy.

The General Assembly of North Carolina finds that improperly constructed, operated, maintained, or abandoned wells can adversely affect the public health and the groundwater resources of the State. Consistent with the duty to safeguard the public welfare, safety, health and to protect and beneficially develop the groundwater resources of this State, it is declared to be the policy of this State to require that the location, construction, repair, and abandonment of wells, and the installation of pumps and pumping equipment conform to such reasonable requirements as may be necessary to protect the public welfare, safety, health and groundwater resources. (1967, c. 1157, s. 2.)

§ 87-85. Definitions.

As used in this Article, unless the context otherwise requires:

- (1) "Abandoned well" means a well whose use has been discontinued, or which is in such a state of disrepair that continued use for obtaining groundwater or other useful purpose is impracticable.
- (2) "Aquifer" means a geologic formation, group of such formations, or a part of such a formation that is water bearing.
- (3) "Artesian well" means a well tapping a confined or artesian aquifer.
- (4) "Environmental Management Commission" means the North Carolina Environmental Management Commission or its successor, unless otherwise indicated.
- (5) "Construction of wells" means all acts necessary to construct wells for any intended purpose or use, including the location and excavation of the well; placement of casings, screens and fittings; development and testing.
- (5a) "Department" means the Department of Environmental Quality unless otherwise indicated.
- (6) "Installation of pumps and pumping equipment" means the procedure employed in the placement and preparation for operation of pumps and pumping equipment, including all construction involved in making entrances to the well and establishing seals.
- (7) "Municipality" means a city, town, county, district, or other public body created by or pursuant to State law, or any combination thereof acting cooperatively or jointly.
- (8) "Nonpotable mineralized water" means brackish, saline, or other water containing minerals of such quantity or type as to render the water unsafe, harmful or generally unsuitable for human consumption and general use.
- (9) "Person" shall mean any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or any other state or country.

- (10) "Polluted water" means water containing organic or other contaminants of such type and quantity as to render it unsafe, harmful or unsuitable for human consumption and general use.
- (10a) "Private drinking water well" means any excavation that is cored, bored, drilled, jetted, dug, or otherwise constructed to obtain groundwater for human consumption and that serves or is proposed to serve 14 or fewer service connections or that serves or is proposed to serve 24 or fewer individuals. The term "private drinking water well" includes a well that supplies drinking water to a transient noncommunity water system as defined in 40 Code of Federal Regulations § 141.2 (July 1, 2003 Edition).
- (11) "Pumps" and "pumping equipment" means any equipment or materials utilized or intended for use in withdrawing or obtaining groundwater including well seals.
- (12) "Repair" means work involved in deepening, reaming, sealing, installing or changing casing depths, perforating, screening, or cleaning, acidizing or redevelopment of a well excavation, or any other work which results in breaking or opening the well seal.
- (13) "Water supply well" means any well intended or usable as a source of water supply, but not to include a well constructed by an individual on land which is owned or leased by him, appurtenant to a single-family dwelling, and intended for domestic use (including household purposes, farm livestock, or gardens).
- (14) "Well" means any excavation that is cored, bored, drilled, jetted, dug or otherwise constructed for the purpose of locating, testing or withdrawing groundwater or for evaluating, testing, developing, draining or recharging any groundwater reservoirs or aquifer, or that may control, divert, or otherwise cause the movement of water from or into any aquifer.
- (15) "Well driller," "driller" or "water well contractor" means any person, firm, or corporation engaged in the business of constructing wells.
- (16) "Well seal" means an approved arrangement or device used to cap a well or to establish and maintain a junction between the casing or curbing of a well and the piping or equipment installed therein, the purpose or function of which is to prevent pollutants from entering the well at the upper terminal.
- (17) "Operation of wells" means the process, frequency, and duration of withdrawing water or other fluids from a well by any means. (1967, c. 1157, s. 3; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1987, c. 496, s. 1; 1989, c. 727, s. 218(21); 1997-358, s. 4; 1997-443, s. 11A.119(a); 2006-202, s. 1.)

§ 87-86. Scope.

No person shall construct, operate, repair, or abandon, or cause to be constructed, operated, repaired, or abandoned, any well, nor shall any person install, repair, or cause to be installed or repaired, any pump or pumping equipment contrary to the provisions of this Article and applicable rules and regulations, provided that this Article shall not apply to any distribution of water beyond the point of discharge from the pump. (1967, c. 1157, s. 4; 1987, c. 496, ss. 2, 3.)

§ 87-87. Authority to adopt rules, regulations, and procedures.

The Environmental Management Commission shall adopt rules governing the location, construction, repair, and abandonment of wells, the operation of water wells or well systems with a designed capacity of 100,000 gallons per day or greater, and the installation and repair of

pumps and pumping equipment. The Environmental Management Commission shall be responsible for the administration of this Article and shall:

- (1) Hold public hearings, upon not less than 30 days' prior notice setting forth the date, place, and time of hearing, and the proposed rules and regulations to be considered at said public hearing, which notice shall be published in one or more newspapers having general circulation throughout the State, in connection with proposed rules and regulations and amendments thereto.
- (2) Enforce the provisions of this Article, and any rules and regulations not inconsistent with the provisions of this Article adopted pursuant thereto.
- (3) Establish procedures and forms for the submission, review, approval, and rejection of applications, notifications, and reports required under this Article.
- (4) Issue such additional regulations as may be necessary to carry out the provisions of this Article.
- (5) Neither adopt nor enforce any rule or regulation that concerns the civil liability of an owner to a well driller for any costs or expenses of drilling and installing a well for the owner.
- (6) Adopt rules governing the permitting and inspection by the Commission of private drinking water wells with a designed capacity of 100,000 gallons per day or greater.
- (7) Adopt rules governing the permitting and inspection by local health departments of private drinking water wells pursuant to G.S. 87-97. (1967, c. 1157, s. 5; 1973, c. 1262, s. 23; 1985, c. 728, s. 4; 1987, c. 496, s. 4; 2006-202, s. 2.)

§ 87-88. General standards and requirements.

(a) **Prior Permission.** ó Prior permission shall be obtained from the Environmental Management Commission for the construction of (i) any water well or of well systems with a designed capacity of 100,000 gallons per day or greater; and (ii) of any well in a geographical area where the Environmental Management Commission finds, after public hearings, such permission to be reasonably necessary to protect the groundwater resources and the public welfare, safety and health, taking into consideration other applicable State laws; provided, however, that the Environmental Management Commission shall not reject any application under this subsection for permission to construct a well except upon the ground that the well would not be in compliance with a provision of this Article or with a rule or regulation of the Environmental Management Commission adopted pursuant to the provisions of G.S. 87-87 of this Article. Notification of approval or rejection of an application for permission to construct a well shall be given the applicant within a period of 15 days after receipt of such application. Private drinking water wells (i) with a designed capacity of 100,000 gallons per day or greater or (ii) that are to be constructed in a geographical area where the Environmental Management Commission has found that prior permission is necessary shall be subject to permitting and inspection by the Environmental Management Commission and shall not be subject to permitting and inspection by a local health department. All other private drinking water wells shall be subject to permitting and inspection by the local health department as provided in G.S. 87-97.

(b) **Reports.** ó Any person completing or abandoning any well shall furnish the Environmental Management Commission a certified record of the construction or abandonment of such well within a period of 30 days after completion of construction or abandonment.

(c) **Prevention of Contamination.** ó Every well shall be constructed and maintained in a condition whereby it is not a source or channel of contamination of the groundwater supply or any aquifer. Wells subject to the provisions of subdivision (a)(i) of this section shall be operated

in such a way that they shall not cause the violation of applicable groundwater quality standards. Contamination as used herein shall mean the act of introducing into water foreign materials of such a nature, quality, and quantity as to cause degradation of the quality of the water.

(d) Valves and Casing on Flowing Artesian Wells. ó Valves and casing on all flowing artesian wells shall be maintained in a condition so that the flow of water can be completely stopped when the well is not being put to a beneficial use. Valves shall be closed when a beneficial use is not being made.

(e) Access Port. ó Every water-supply well and such other wells, as may be specified by the Environmental Management Commission, shall be equipped with a usable access port or air line and to be a minimum of 0.5 inch inside diameter opening so that the position of the water level can be determined at any time. Such port shall be installed and maintained in such manner as to prevent entrance of water or foreign material.

(f) Mineralized Water. ó Whenever a water-bearing stratum or aquifer that contains nonpotable mineralized water is encountered in well construction, the stratum shall be adequately cased or cemented off as conditions may require so that contamination of the overlying or underlying groundwater zones will not occur.

(g) Polluted Water. ó In constructing any well, all water-bearing zones that are known to contain polluted water shall be adequately cased or cemented off so that pollution of the overlying and underlying groundwater zones will not occur.

(h) Well Test. ó Every water-supply well shall be tested for capacity by a method and for a period of time acceptable to the Department and depending on the intended use of the well.

(i) Chlorination of the Well. ó Upon completion of the well construction and pump installation, all water-supply wells installed for the purpose of obtaining groundwater for human consumption shall be sterilized in accordance with standards for sterilization of drinking water wells established by the U.S. Public Health Service.

(j) Use of Well for Recharge or Disposal. ó No well shall be used for recharge, injection or disposal purposes without prior permission from the Environmental Management Commission.

(k) Abandonment of Wells. ó

(1) Temporary Abandonment: When any well is temporarily removed from service, the top of the well shall be sealed with a water-tight cap or seal.

(2) Permanent Abandonment: Any well that is to be permanently abandoned shall be filled, plugged, or sealed in such a manner as to prevent the well from being a channel allowing the vertical movement of water and a source of contamination of the groundwater supply.

(3) Abandonment of Water Supply Wells for Other Use: Any water supply well that is removed from service as a potable water supply source may be used for other purposes, including, but not limited to, irrigation, commercial use, or industrial use, and such well is not subject to either subdivision (1) or (2) of this subsection during its use for other purposes. For purposes of this subsection only, "water supply well" includes wells constructed by an individual on land which is owned or leased by the individual, appurtenant to a single-family dwelling, and intended for domestic use (including nonpotable household purposes, farm livestock, or gardens). (1967, c. 1157, s. 6; 1973, c. 476, s. 128; c. 1262, s. 23; 1987, c. 496, s. 4; 1989, c. 727, s. 14; 1998-212, s. 14.9B(a); 2006-202, s. 3; 2006-259, s. 50(a); 2011-255, s. 3.)

§ 87-89. Existing installations.

No well or pump installation in existence and in use on July 6, 1967, shall be required to conform to provisions of subsection (a) of G.S. 87-88, or any rules or regulations adopted pursuant thereto not inconsistent with the provisions of this Article; provided, however, that any well now or hereafter abandoned, including any well deemed to have been abandoned, as defined in the Article, shall, within such time as may be specified by the Environmental Management Commission, be brought into compliance with the requirements of this Article and any applicable rules or regulations with respect to abandonment of wells. It is the intention of the General Assembly that if the provisions of this section are held invalid as a grant of an exclusive or separate emolument or privilege, within the meaning of Article I, Sec. 7 of the North Carolina Constitution, the remainder of this Article shall be given effect without the invalid provision or provisions. (1967, c. 1157, s. 7; 1973, c. 1262, s. 23.)

§ 87-90. Rights of investigation, entry, access and inspection.

The Environmental Management Commission or Department shall have the right to conduct such investigations as it may reasonably find necessary to carry on its duties prescribed in this Article, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition, installation, or operation of any well or associated equipment, facility, or property, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the installation or operation of any well: Provided, that no person shall be required to disclose any secret formula, processes or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision. No person shall refuse entry or access to any authorized representative of the Environmental Management Commission who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties, consistent with the provisions of this Article. (1967, c. 1157, s. 8; 1973, c. 1262, s. 23.)

§ 87-91. Notice of violation; remedial action order.

(a) Whenever the Environmental Management Commission has reasonable grounds to believe that there has been a violation of this Article or any rule adopted pursuant to this Article, the Environmental Management Commission or Department shall give written notice to the person or persons alleged to be in violation. The notice shall identify the provision of this Article or rule adopted pursuant to this Article alleged to be violated and the facts alleged to constitute the violation. The Environmental Management Commission may also issue an order requiring specific remedial action. An order requiring remedial action shall specify the action to be taken, the date by which the action must be completed, the possible consequences of failing to comply with the order, and the procedure by which the alleged violator may seek review of the order.

(b) The notice may be served by any means authorized under G.S. 1A-1, Rule 4. (1967, c. 1157, s. 9; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 15; 1997-358, s. 7; 1997-443, s. 11A.119(a).)

§ 87-92. Hearings; appeals.

Any person wishing to contest a penalty, permit decision, or other order issued under this Article shall be entitled to an administrative hearing and judicial review conducted according to the procedures established in Chapter 150B of the General Statutes. (1967, c. 1157, s. 10; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1985, c. 728, s. 1; 1987, c. 827, ss. 1, 70.)

§ 87-93: Repealed by Session Laws 1985, c. 728, s. 2.

§ 87-94. Civil penalties.

(a) Any person who violates any provision of this Article, Article 7A of this Chapter, any order issued pursuant thereto, or any rule adopted thereunder, shall be subject to a civil penalty of not more than one thousand dollars (\$1,000) for each violation, as determined by the Secretary of Environmental Quality. Each day of a continuing violation shall be considered a separate offense. No person shall be subject to a penalty who did not directly commit the violation or cause it to be committed.

(b) Repealed by Session Laws 1997-358, s. 3.

(c) In determining the amount of the penalty the Secretary shall consider factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143-215.6A and G.S. 143B-282.1 shall apply to civil penalties assessed under this section.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4.

(e) Repealed by Session Laws 1997-358, s. 3.

(f) Repealed by 1995 (Reg. Sess., 1996), c. 743, s. 2.

(g) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1967, c. 1157, s. 12; 1985, c. 728, s. 3; 1987, c. 246, s. 2; 1989, c. 727, s. 218(22); 1989 (Reg. Sess., 1990), c. 1036, s. 10; 1995 (Reg. Sess., 1996), c. 743, s. 2; 1997-358, s. 3; 1997-443, s. 11A.119(a); 1998-215, s. 44; 2001-440, s. 1.4.)

§ 87-95. Injunctive relief.

Upon violation of any of the provisions of or any order issued pursuant to this Article, or duly adopted rule of the Commission implementing the provisions of this Article, the Secretary of Environmental Quality may, either before or after the institution of proceedings for the collection of the penalty imposed by this Article for such violations, request the Attorney General to institute a civil action in the superior court in the name of the State upon the relation of the Department of Environmental Quality for injunctive relief to restrain the violation or require corrective action, and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Article for any violation of same. (1967, c. 1157, s. 13; 1973, c. 1262, s. 23; 1975, c. 842, s. 1; 1977, c. 771, s. 4; 1989, c. 727, s. 16; 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1997-443, s. 11A.119(a).)

§ 87-96. Conflict with other laws.

(a) The provisions of any law, rule, or local ordinance which establish standards affording greater protection to groundwater resources or public health, safety, or welfare shall prevail, within the jurisdiction to which they apply, over the provisions of this Article and rules adopted pursuant to this Article.

(b) Rules relating to public health, wells, or groundwater adopted by the Commission for Public Health shall prevail over this Article, rules adopted pursuant to this Article, and rules adopted by a local board of health pursuant to subsection (c) of this section. This Article shall not be construed to repeal any law or rule in effect as of July 1, 1989.

(c) A local board of health may adopt by reference rules adopted by the Environmental Management Commission pursuant to this Article, and may adopt more stringent rules when

necessary to protect the public health. (1967, c. 1157, s. 14; 1973, c. 476, s. 128; 1989, c. 727, s. 17; 1991, c. 650, s. 1; 2007-182, s. 2.)

§ 87-97. Permitting, inspection, and testing of private drinking water wells.

(a) **Mandatory Local Well Programs.** ó Each county, through the local health department that serves the county, shall implement a private drinking water well permitting, inspection, and testing program. Local health departments shall administer the program and enforce the minimum well construction, permitting, inspection, repair, and testing requirements set out in this Article and rules adopted pursuant to this Article. No person shall unduly delay or refuse to permit a well that can be constructed or repaired and operated in compliance with the requirements set out in this Article and rules adopted pursuant to this Article.

(a1) **Use of Standard Forms.** - Local well programs shall use the standard forms created by the Department for all required submittals and shall not create their own forms.

(b) **Permit Required.** ó Except for those wells required to be permitted by the Environmental Management Commission pursuant to G.S. 87-88, no person shall:

(1) Construct or assist in the construction of a private drinking water well unless a construction permit has been obtained from the local health department.

(2) Repair or assist in the repair of a private drinking water well unless a repair permit has been obtained from the local health department, except that a permit shall not be required for the repair or replacement of a pump or tank.

(b1) **Permit to Include Authorization for Electrical.** óWhen a permit is issued under this section, that permit shall also be deemed to include authorization for the installation, construction, maintenance, or repair of electrical wiring, devices, appliances, or equipment by a person certified as a well contractor under Article 7A of this Chapter when running electrical wires from the well pump to the pressure switch. The local health department shall be responsible for notifying the appropriate building inspector of the issuance of the well permit.

(c) **Permit Not Required for Maintenance or Pump Repair or Replacement.** ó A repair permit shall not be required for any private drinking water well maintenance work that does not involve breaking or opening the well seal. A repair permit shall not be required for any private drinking water well repair work that involves only the repair or replacement of a pump or tank.

(d) **Well Site Evaluation.** ó The local health department shall conduct a field investigation to evaluate the site on which a private drinking water well is proposed to be located before issuing a permit pursuant to this section. The field investigation shall determine whether there is any abandoned well located on the site, and if so, the construction permit shall be conditioned upon the proper closure of all abandoned wells located on the site in accordance with the requirements of this Article and rules adopted pursuant to this Article. If a private drinking water well is proposed to be located on a site on which a wastewater system subject to the requirements of Article 11 of Chapter 130A of the General Statutes is located or proposed to be located, the application for a construction permit shall be accompanied by a plat or site plan, as defined in G.S. 130A-334.

If the well location marked on the map submitted with an application to a local well program is also marked with a stake or similar marker on the property, then the local well program may not require the contractor to be on site during the on-site predrill inspection, as long as the contractor is available by telephone to answer questions.

(e) **Issuance of Permit.** - In accordance with G.S.87-97.1 and G.S.87-97.2, within 30 days of receipt of an application to construct or repair a well, a local health department shall make a determination whether the proposed private drinking water well can be constructed or repaired and operated in compliance with this Article and rules adopted pursuant to this Article and shall issue a permit or denial accordingly. If a local health department fails to act within 30

days, the permit shall automatically be issued, and the local health department may challenge issuance of the permit as provided in Chapter 150B of the General Statutes. The local health department may impose any conditions on the issuance of a construction permit or repair permit that it determines to be necessary to ensure compliance with this Article and rules adopted pursuant to this Article. Notwithstanding any other provision of law, no permit for a well that is in compliance with this Article and the rules adopted pursuant to this Article shall be denied on the basis of a local government policy that discourages or prohibits the drilling of new wells.

(e1) Notice for Wells at Contamination Sites. - The Commission shall adopt rules governing permits issued for private drinking water wells for circumstances in which the local health department has determined that the proposed site for a private drinking water well is located within 1,000 feet of a known source of release of contamination. Rules adopted pursuant to this subsection shall provide for notice and information of the known source of release of contamination and any known risk of issuing a permit for the construction and use of a private drinking water well on such a site.

(f) Expiration and Revocation. ó A construction permit or repair permit shall be valid for a period of five years except that the local health department may revoke a permit at any time if it determines that there has been a material change in any fact or circumstance upon which the permit is issued. The foregoing shall be prominently stated on the face of the permit. The validity of a construction permit or a repair permit shall not be affected by a change in ownership of the site on which a private drinking water well is proposed to be located or is located if the location of the well is unchanged and the well and the facility served by the well remain under common ownership.

(f1) Chlorination of the Well. ó Upon completion of construction of a private drinking water well, the well shall be sterilized in accordance with the standards of drinking water wells established by the United States Public Health Service.

(g) Certificate of Completion. - Upon completion of construction of a private drinking water well or repair of a private drinking water well for which a permit is required under this section, the local health department shall inspect the well to determine whether it was constructed or repaired in compliance with the construction permit or repair permit. If the local health department determines that the private drinking water well has been constructed or repaired in accordance with the requirements of the construction permit or repair permit, the construction and repair requirements of this Article, and rules adopted pursuant to this Article, the local health department shall issue a certificate of completion. No person shall place a private drinking water well into service without first having obtained a certificate of completion. No person shall return a private drinking water well that has undergone repair to service without first having obtained a certificate of completion.

(h) Drinking Water Testing. ó Within 30 days after it issues a certificate of completion for a newly constructed private drinking water well, the local health department shall test the water obtained from the well or ensure that the water obtained from the well has been sampled and tested by a certified laboratory in accordance with rules adopted by the Commission for Public Health. The water shall be tested for the following parameters: arsenic, barium, cadmium, chromium, copper, fluoride, lead, iron, magnesium, manganese, mercury, nitrates, nitrites, selenium, silver, sodium, zinc, pH, and bacterial indicators.

(i) Commission for Public Health to Adopt Drinking Water Testing Rules. - The Commission for Public Health shall adopt rules governing the sampling and testing of well water and the reporting of test results. The rules shall allow local health departments to designate third parties to collect and test samples and report test results. The rules shall also provide for corrective action and retesting where appropriate. The Commission for Public Health may by rule require testing for additional parameters, including volatile organic compounds, if the

Commission makes a specific finding that testing for the additional parameters is necessary to protect public health. If the Commission finds that testing for certain volatile organic compounds is necessary to protect public health and initiates rule making to require testing for certain volatile organic compounds, the Commission shall consider all of the following factors in the development of the rule: (i) known current and historic land uses around well sites and associated contaminants; (ii) known contaminated sites within a given radius of a well and any known data regarding dates of contamination, geology, and other relevant factors; (iii) any GIS-based information on known contamination sources from databases available to the Department of Environmental Quality; and (iv) visual on-site inspections of well sites. In addition, the rules shall require local health departments to educate citizens for whom new private drinking water wells are constructed and for citizens who contact local health departments regarding testing an existing well on all of the following:

- (1) The scope of the testing required pursuant to this Article.
- (2) Optional testing available pursuant to this Article.
- (3) The limitations of both the required and optional testing.
- (4) Minimum drinking water standards.

(j) **Test Results.** The local health department shall provide test results to the owner of the newly constructed private drinking water well and, to the extent practicable, to any leaseholder of a dwelling unit or other facility served by the well at the time the water is sampled. The local health department shall include with any test results provided to an owner of a private drinking water well, information regarding the scope of the required and optional testing as established by rules adopted pursuant to subsection (i) of this section.

(k) **Registry of Permits and Test Results.** - Each local health department shall maintain a registry of all private drinking water wells for which a construction permit or repair permit is issued that is searchable by address or addresses served by the well. The registry shall specify the physical location of each private drinking water well and shall include the results of all tests of water from each well. The local health department shall retain a record of the results of all tests of water from a private drinking water well until the well is properly closed in accordance with the requirements of this Article and rules adopted pursuant to this Article.

(l) **Authority Not Limited.** This section shall not be construed to limit any authority of local boards of health, local health departments, the Department of Health and Human Services, or the Commission for Public Health to protect public health. (2006-202, s. 4; 2006-259, ss. 50(b), 50(c), 51; 2007-182, s. 2; 2007-495, s. 1; 2008-198, s. 1; 2009-124, ss. 1, 3; 2010-31, s. 10.10A; 2011-255, ss. 1, 2; 2012-187, ss. 12(a), (b); 2013-122, ss. 2, 3; 2013-413, s. 35(a); 2014-120, ss. 43(a), (e).)

§ 87-97.1. Issuance of permit for irrigation water well.

(a) A property owner may apply for, and be issued, a permit for an irrigation water well, whether the property is connected to, or served by, a public water system. The application shall be in accordance with G.S. 87-97 and shall specifically state that the irrigation water well will not be interconnected to plumbing required that is connected to any public water system and will be used for irrigation or other nonpotable purposes only.

(b) This section shall not apply if the property is connected to, or may be served by, a public water system that the public authority or unit of government operating the public water system is being assisted by the Local Government Commission.

(c) For purposes of this section, "irrigation water well" shall mean any water well that is not interconnected to any plumbing required to be connected to any public water system and that produces water that is used for irrigation or other nonpotable purposes only.

§ 87-97.2. Issuance of permit for property within service area of a public water system.

(a) Notwithstanding G.S. 130A-55(16), 153A-284, 160A-317, 162A-6(a)(14d), and 162A-14(2), a property owner may apply for, and be issued, a permit for a private drinking water well to serve any undeveloped or unimproved property located so as to be served by a public water system.

(b) Notwithstanding G.S. 130A-55(16), 153A-284, 160A-317, 162A-6(a)(14d), and 162A-14(2), a property owner of developed or improved property located so as to be served by a public water system may apply for, and be issued, a permit for a private drinking water well if the public water system has not yet installed water lines directly available to the property or otherwise cannot provide water service to the property at the time the property owner desires water service.

(c) Upon compliance with this Article, the property owner receiving a permit pursuant to subsection (a) or (b) of this section shall not be required to connect to the public water system for so long as the permitted private drinking water well remains compliant and in use. A property owner may opt to connect to the public water system if the property owner so desires. If the property owner opts to connect, the property owner may continue to operate the private drinking water well if that well is not interconnected to any plumbing connected to the public water system and that produces water that is used for irrigation or other nonpotable purposes only.

(d) Nothing in this section shall require a property owner to install a private drinking water well if the property is located so as to be served by a public water system and the public water system is willing to provide service to the property.

(e) This section shall not apply, and a public water system may mandate connection to that public water system, in any of the following situations:

- (1) The private drinking water well serving the property has failed and cannot be repaired.
- (2) The property is located in an area where the drinking water removed by the private drinking water well is contaminated or likely to become contaminated due to nearby contamination.
- (3) The public authority or unit of government operating the public water system is being assisted by the Local Government Commission.
- (4) The public authority or unit of government operating the public water system is in the process of expanding or repairing the public water system and is actively making progress to having water lines installed directly available to provide water service to that property within the 24 months of the time the property owner applies for the private drinking water well permit.

§ 87-98. Bernard Allen Memorial Emergency Drinking Water Fund.

(a) The Bernard Allen Memorial Emergency Drinking Water Fund is established under the control and direction of the Department. The Fund shall be a nonreverting fund consisting of monies appropriated by the General Assembly or made available to the Fund from any other source.

(b) The Fund may be used to pay for:

- (1) Notification, to the extent practicable, of persons aged 18 and older who reside in any dwelling unit, and the senior official in charge of any business, at which drinking water is supplied from a private drinking water well or improved spring that is located within 1,500 feet of, and at risk from, known groundwater contamination. The senior official in charge of the business shall take reasonable measures to notify all employees of the business of the groundwater contamination, including posting a notice of

the contamination in a form and at a location that is readily accessible to the employees of the business.

- (2) The costs of testing of private drinking water wells and improved springs for suspected contamination up to once every three years upon request by a person who uses the well, or more frequent testing if the concentration of one or more contaminants in a private drinking water well is increasing over time and there is a significant risk that the concentration of a contaminant will exceed the drinking water action levels set forth in subsection (c) of this section within a three-year period.
- (3) Additional testing to confirm the results of a previous test.
- (4) The temporary or permanent provision of alternative drinking water supplies to persons whose drinking water well or improved spring is contaminated. Under this section, an alternative drinking water supply includes the repair, such as use of a filtration system, or replacement of a contaminated well or the connection to a public water supply.
- (5) Monitoring of filtration systems used in connection with temporary or permanent alternative drinking water supplies provided pursuant to this section.

(c) The Department shall disburse monies from the Fund based on financial need and on the risk to public health posed by groundwater contamination and shall give priority to the provision of services under this section to instances when an alternative source of funds is not available. The Fund shall not be used to provide alternative water supply to households with incomes greater than three hundred percent (300%) of the current federal poverty level. The Fund may be used to provide alternative drinking water supplies if the Department determines that the concentration of one or more contaminants in the private drinking water well or improved spring exceeds the federal maximum contaminant level, or the federal drinking water action level as defined in 40 Code of Federal Regulations § 141.1 through § 141.571 (1 July 2007) and 40 Code of Federal Regulations § 143.3 (1 July 2007). For a contaminant for which a federal maximum contaminant level or drinking water action level has not been established, the State groundwater standard established by the Environmental Management Commission for the concentration of that contaminant shall be used to determine whether the Fund may be used to provide alternative drinking water supplies. The Fund may also be used to provide alternative drinking water supplies as provided in this section if the Department determines that the concentration of one or more contaminants in a private drinking water well is increasing over time and that there is a significant risk that the concentration of a contaminant will exceed the federal maximum contaminant level or drinking water action level, or the State groundwater standard. A determination of the concentration of a contaminant shall be based on a sample of water collected from the private drinking water well within the past 12 months.

(c1) In disbursing monies from the Fund, the Department shall give preference to provision of permanent replacement water supplies by connection to public water supplies and repair or replacement of contaminated wells over the provision of temporary water supplies. In providing alternative drinking water supplies, the Department shall give preference to connection to a public water supply system or to construction of a new private drinking water well over the use of a filtration system if the Department determines that the costs of periodic required maintenance of the filtration system would be cost-prohibitive for users of the alternative drinking water supply.

(c2) If the Department provides an alternative drinking water supply by extension of a waterline, the Department may disburse from the Fund no more than fifty thousand dollars (\$50,000) per household or other service connection. For projects where more than 10 residences

are eligible for alternative water supplies under this section, no more than one-third of the total cost of the project may be paid from the Fund. The Department may combine monies from the Fund with monies from other sources in order to pay the total cost of the project.

(c3) The Fund shall be used to provide alternative drinking water supplies only if the Department determines that the person or persons who are responsible for the contamination of the private drinking water well is or are not financially viable or cannot be identified or located and if the Department determines that one of the following applies:

- (1) The contamination of the private drinking water well is naturally occurring.
- (2) The owner of the property on which the private drinking water well is located did not cause or contribute to the contamination or control the source of the contamination.
- (3) The source of the contamination is the application or disposal of a hazardous substance or pesticide that occurred without the consent of the owner of the property on which the private drinking water well is located.

(c4) The Department may use up to one hundred thousand dollars (\$100,000) annually of the monies in the Fund to pay the personnel and other direct costs associated with the implementation of this section.

(c5) The Fund shall not be used for remediation of groundwater contamination.

(c6) Nothing in this section expands, contracts, or modifies the obligation of responsible parties under Article 9 or 10 of Chapter 130A of the General Statutes, this Article, or Article 21A of this Chapter to assess contamination, identify receptors, or remediate groundwater or soil contamination.

(c7) In disbursing monies from the Fund for replacement water supplies, the Department shall give priority to circumstances in which a well is contaminated as the result of nonnaturally occurring groundwater contamination in the area over circumstances in which a well has naturally occurring contamination.

(d) The Department shall establish criteria by which the Department is to evaluate applications and disburse monies from this Fund and may adopt any rules necessary to implement this section.

(e) The Department, in consultation with the Commission for Public Health and local health departments, shall report no later than October 1 of each year to the Environmental Review Commission, the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources, and the Fiscal Research Division of the General Assembly on the implementation of this section. The report shall include the purpose and amount of all expenditures from the Fund during the prior fiscal year, a discussion of the benefits and deficiencies realized as a result of the section, and may also include recommendations for any legislative action. (2006-255, s. 5.2; 2007-182, s. 2; 2007-323, s. 12.2(a); 2008-107, s. 12.1; 2013-360, s. 14.14; 2014-100, s. 14.21(e).)